**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928**

**WP(C).No. 22809 of 2005(M)**

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**PETITIONERS:**

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1. **R.N. RAJEEV, RAJ SADAN, T.C 54/439, KARAKKAMANDAPAM, NEMOM P.O., TRIVANDRUM.**
2. **C.G. BIJU, KARTHIKA, KAVALOTTUKONAM, PERRORKAVU P.O, TRIVANDRUM.**
3. **C.S. NEENAMOL, `PRANAVAM', CHANI, KANJIRAMKULAM P.O., TRIVANDRUM.**
4. **LAL MOHAN. V., NO.7, RIVER GARDENS, NEERAMANKARA, KAIMANOM P.O., TRIVANDRUM.**
5. **JASSIM. A., NAZIM MANZIL, SREE KRISHNA NAGAR, CHAVADI MUKKU, SREEKARYAM P.O., TRIVANDRUM.**
6. **C.G. ARUN, MAYURAM, KODUNGANNUR P.O., TRIVANDRUM.**
7. **BEENA. M. RAVI, PANNIYARA, PIRAVANTHUR P.O., PUNALUR.**
8. **R. SREEJIMON, BUNGLOW PUTHEN VEEDU, ASRAMAM P.O., KOLLAM.**
9. **SUSHAMA. A., THIKOTTATHIL OTTAKKAL P.O., THENMALA.**
10. **SAJU T. JOHN, THUNDIYIL HOUSE, KAKKODU P.O., PUNALUR.**
11. **SUJAMONY R., PALAKASSERIL, KANJAVELI P.O., KOLLAM.**

**W.P.(C). NO.22809/2005:**

**12. PRAMOD R., AYILYAM, THUKALASSERY
THIRUVALLA P.O.**

**13. CIBI SUNDARAM V., SUNDRAM COTTAGE,
ELAMPALLOOR, KUNDARA P.O.**

**14. NISHA S.U., DEEPTHI,
NARICKAL P.O., PUNALUR.**

**15. PADMAJA S., HEINS BHAVAN,
KUNNIKKODU P.O., KOTTARAKKARA.**

**BY ADV. SRI.S.GOPAKUMARAN NAIR.**

**RESPONDENTS:**
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**1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM.**

**2. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, P.S.C OFFICE,
THIRUVANANTHAPURAM.**

**3. STATE, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

***ADDL.R4. T.C. FRANCIS, THAPPALODATH HOUSE,
ELAMAKKARA.P.O.,
PARAYIL ROAD, ERNAKULAM- 682026.**

***ADDL.R5. SIJIMON.K.M.,
KADAVATHOTTUNGAL,
NETTOOR.P.O.,
ERNAKULAM - 682 304.**

***ADDL.R4 & R5 IMPLEADED AS PER THE ORDER DTD. 03/10/2006
IN I.A. NO. 15817/2005.**

**BY ADV. SRI.K.S.ANIL, SC, KSEB,
SRI.S.RAMESH BABU,
GOVT. PLEADER SRI. P.A. SALIM.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21/02/2007,ALONG WITH W.P.(C). NO. 26264/2005 AND CONNECTED
CASES, THE COURT ON 07/03/2007 DELIVERED THE
FOLLOWING:**

**W.P.(C). NO.22809/2005:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE NOTIFICATION OF 2002.**

**EXT.P.1.A. SERIES: COPY OF THE HALL TICKETS OF THE PETITIONERS.**

**EXT.P.2: COPY OF THE SHORT LIST DTD. 05/07/2005.**

**EXT.P.3: COPY OF THE LEAFLET OF KSEB DTD. 04/08/2004.**

**EXT.P.3.A: COPY OF THE STATEMENT OF KSEB ASSOCIATION DTD. 04/06/2005.**

**EXT.P.4: COPY OF THE NEWS REPORT DTD. 05/07/2005 IN DESHABIMANI DAILY.**

**EXT.P.5: COPY OF THE RELEVANT EXTRACT OF DISCUSSIONS HELD BY THE MINISTER OF POWER DT. 09/02/2004 AND 14/09/2004.**

**EXT.P.5.A: COPY OF THE COVERING LETTER OF EXT. P.5.**

**EXT.P.6: COPY OF THE NEWS REPORT IN MALAYALA MANORAMA DT. 28/09/2004.**

**EXT.P.6.A: COPY OF THE NEWS REPORT IN MATHRUBHOOMI DAILY DTD. 29/09/2004 DTD. 10/09/04.**

**EXT.P.7: COPY OF THE EDITORIAL DTD. 11/09/2004 IN MATHRUBHOOMI DAILY.**

**EXT.P.8: COPY OF THE EDITORIAL DTD. 29/09/2004 IN MALAYALA MANORAMA DAILY.**

**EXT.P.9: COPY OF THE REPORT IN MATHRUBHOOMI DAILY DTD. 15/09/2004.**

**EXT.P.10: COPY OF THE NOTIFICATION PUBLISHED IN THE PSC BULLETIN.**

**EXT.P.10.A: COPY OF THE RANK LIST PUBLISHED IN THE PSC BULLETIN.**

**EXT.P.11: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE CHAIRMAN, KSE BOARD, PATTOM.**

**W.P.(C). NO.22809/2005:**

**RESPONDENT'S EXHIBITS:**

**EXT.R.2.A: COPY OF THE JUDGMENT IN W.P. NO. 8310/2004 DTD. 26/03/2004.**

**EXT.R2.B: COPY OF THE JUDGMENT IN W.P. NO. 9088/2004 DTD. 16/03/2004.**

**EXT.R2.C: COPY OF THE JUDGMENT IN W.P. NO. 18087/2004.**

**EXT.R2.D: COPY OF THE CIRCULAR NO. 30, DTD. 01/12/04 ISSUED BY THE COMMISSION.**

**//TRUE COPY//**

**prv.**

**T.R. Ramachandran Nair, J.**

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**W.P.(C).NOs.22809, 23911, 26264 & 28369 of 2005 & 28248 & 34444 of 2006**

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**Dated this the 7th day of March, 2007**

## JUDGMENT

These writ petitions concern the claim of the petitioners to be included in the short list for appointment to the post of Assistant Engineer (Electrical) under the first respondent Kerala State Electricity Board (for short 'the Board'). Since common questions and issues arise in these cases, they are disposed of by a common judgment.

2. The short facts as evident from the pleadings are the following:

3. The Public Service Commission invited applications as per a notification of the year 2002 (9.4.2002) for appointment to the post of Asst. Engineer (Electrical) and the number of vacancies shown is 42. Pursuant to the notification, petitioners submitted applications within the time allowed. They have participated in the written test conducted by the Public Service Commission. Public Service Commission published a short list of 96 candidates on 5.7.2005 (Ext.P2 in Writ Petition No.22809/2005) to be called for interview. Apparently, the attack raised by the petitioners is against the action of the Public Service Commission in restricting the

number of candidates to 96 in Ext.P2 short list while according to them, there were large number of vacancies available with the Board at that time. The averments commonly made in the writ petitions are that during the previous selection in 1994, even though 200 vacancies were notified, 771 candidates were included in the main list and more than 1000 candidates were appointed. It is contended that going by Ext.P5 produced in Writ Petition No.22809/2005, it will be evident that the number of vacancies will be at least 791 as on September 2004. Therefore, the petitioners contend that the method adopted by the Public Service Commission in publishing a short list of only 96 candidates is arbitrary and against the procedure contained in the circulars issued by the Public Service Commission itself. It is further pointed out that if an expanded select list (short list) was prepared by the Public Service Commission, there was every chance for the petitioners being included in the rank list.

4. The petitioners in Writ Petition No.28248/2006 have got added contentions. Ext.P1 is the rank list published by the Public Service Commission after the written test and interview for the same post. The second petitioner is included as supplemental (4) in the category of Ezhava, third petitioner as supplemental (6) in the category of Muslims and fourth petitioner as supplemental (8) in the category of Muslims. It is contended

that the Public Service Commission had fixed a cut off mark for the written test as 50 and therefore only a few were able to be included in the short list and in the main list. It is further pointed out that during the currency of the rank list, 214 vacancies were reported by the Board out of which only 142 advices alone could be issued by the Public Service Commission and in the balance vacancies, viz. 72, no candidate could be advised. It is further contended that the main list contained only 88 number of candidates and the entire list has become inoperative. In this writ petition also, it is claimed that there are more vacancies (400) and hence the method adopted by the Public Service Commission is against the dictum laid down in Ext.P2 judgment. The petitioners also therefore pray that Ext.P1 is liable to be quashed and the Public Service Commission is to be directed to publish an additional rank list and further to direct them to issue advice to the petitioners in the vacancies available.

5. The petitioners in Writ Petition No.34444/2006 were also applicants to the post but they were not successful in the written test conducted by the Public Service Commission and hence do not figure in the short list. Similar contentions are raised by them also. Specifically they rely upon Ext.P12 circular issued by the Public Service Commission governing the procedure for preparation of short list and rank list.

6. Paragraph 1 of Ext.P12 states that the number of candidates to be included in the short lists and ranked lists should not be decided mechanically. Commission will decide the number to be included in each case considering the number of vacancies reported, number of candidates advised from the previous list, nature of the post and chances of occurrence of vacancies.

7. The Public Service Commission and the Board have filed counter affidavits in these cases.

8. Heard Shri S. Gopakumaran Nair, Shri K. Jaju Babu, Shri M.V. Amaresan and Shri George Abraham, learned counsel appearing for the petitioners, Shri K.S. Anil, learned counsel for the Board and Shri P.C. Sasidharan, learned counsel for the Public Service Commission.

9. In the counter affidavit filed by the Public Service Commission, the Commission has taken a stand that a candidate who has not been included in the short list is not entitled to seek the relief of reporting of further vacancies and persons who have failed to get their names included in the list are those who have not secured the minimum cut off marks. The judgment of this court in Writ petition No.18087/2004 is relied upon, to point out that there is no obligation to publish a long list. Judgments rendered by this court in Writ petition Nos.9088/2004 and 8310/2004 are

also relied upon to support the above argument. It is also stated that short list has been prepared in accordance with the procedures prescribed in the circulars and that based on the hypothetical number of vacancies pointed out by the petitioners, the Commission cannot act at all.

11. In the counter affidavit filed by the Board certain aspects are stated, which are reproduced below:

> 3. It is submitted that, the details regarding the vacancy position is as follows:-
>
> Between 25.6.2000 & 9.4.2002
>
> | Date of report | No. of vacancies | Nature of vacancy |
> |---|---|---|
> | 27.3.2001 | 27 | NJD |
> | 26.5.2001 | 10 | NJD |
> | 2.6.2001 | 4 | NJD |
> | 18.8.2002 | 1 | NJD |
> | Total | 42 | |
>
> It is submitted that, the Board, vide letter dated 13.6.2002, as a matter of Government policy, requested the KPSC to cancel the notification of the appointment to the post of Assistant Engineers (Electrical) as per the Board meeting dated 30.4.2002, whereby it was decided to withdraw the vacancy reported to the KPSC.
>
> It is submitted that, regarding the vacancies reported to the KPSC between 10.4.2002 and 5.7.2005, no vacancies were reported.
>
> Regarding the number of vacancies arose between 5.7.2005 and the currency of the rank list, the details are as follows:
>
> | Date of report | No. of vacancies | Nature of vacancy |
> |---|---|---|
> | 21.2.2006 | 54 | (which included 42 NJD vacancies together with 12 fresh vacancies identified) |
> | 1.3.2006 | 40 | fresh vacancies |
> | 4.8.2006 | 121 | fresh vacancies |

| | | |
|---|---|---|
| 31.10.2006 | 5 | NJD |
| Total | 220 | |

4. It is submitted that altogether 220 vacancies (including NJD vacancies) were reported to KPSC. The KPSC advised only 142 candidates. All the 142 candidates have been given appointment by the Board. The KPSC has intimated on 19.9.2006, that the present rank list exhausted and the candidates for the remaining vacancies will be advised after the selection process is over."

This affidavit is filed pursuant to the interim order dated 7.11.2006. In paragraph 3 of the affidavit, it is stated that as on the date of notification, there were a total number of 42 N.J.D. vacancies. It is stated that by letter dated 13.6.2002, the Board had requested the Public Service Commission to cancel the notification for appointment to the post of Asst. Engineers (Electrical) and withdraw the vacancy reported to the Public Service Commission. It is further stated that between 10.4.2002 and 5.7.2005 no vacancies were reported. Between 5.7.2005 and the currency of the rank list, a total number 220 vacancies had been reported and 142 candidates have been given appointment by the Board.

12. Going by the averments in the counter affidavit of the Board, it is seen that actually the notification was issued in respect of 42 N.J.D. vacancies and the number of vacancies claimed by the petitioners is only an inflated one, and has no support on circumstances available in the ground.

13. It may also be mentioned herein that in these writ petitions there

was no direction to interview the petitioners or to keep the rank list alive during the pendency of the writ petitions. The petitioners in Writ Petition No.28248/2006 (except first petitioner) were included in the short list after the interview. In the writ petitions except Writ petition No.28248/2006, there is no challenge against the cut off marks adopted. It is evident that the petitioners therein have participated in the written test and did not challenge the method of selection at any time prior to the publication of the short list. This writ petition is filed on 26.10.2006 after the rank list exhausted on 19.9.2006 and hence is a highly belated one. Apparently, the contention raised is based on the circular issued by the Public Service Commission regarding the procedure for publishing a short list. The question therefore is whether there is any legal and enforceable right for the petitioners to contend that they should have been included in the short list de hors the selection process. Apparently the petitioners relied upon inflated number of vacancies in filing the writ petitions.

14. The petitioners relied upon the principles stated by a Division Bench of this court in Writ Petition No.21840/2005 to contend for the position that the method adopted by the Public Service Commission to short list the candidates is wrong. The said judgment follows the decision of the Honourable Supreme Court in **State of Punjab and others v. Manjit Singh**

**and others (AIR 2003 SC 4580).**

15. Learned counsel for the Public Service Commission relied upon the judgment of this court in Writ Petition No.29829/2005 wherein the very same issue was raised in connection with the appointment to the post of Asst. Engineer (Electrical). He also relied upon another judgment of the learned single Judge in Writ Petition NO.27174/2006 which also concerns selection to the very same post. These two writ petitions were filed by persons who were not included in the short list and the contention that arising vacancies should have been taken into account by the Public Service Commission while publishing the short list, was rejected. The learned judge in the judgment in writ petition NO.29829/2005 held as follows:

> " 2. Even assuming that the Commission has to take into account all the vacancies reported during the process of selection, once the short list has been published and further proceedings pursuant to the short list have been set in motion, no purpose will be served by directing the respondent-Board to report more vacancies. This court will not direct the Commission to recast the short list based on vacancies reported after the finalisation of the short list. Petitioner did not take appropriate action at the relevant time. It will not be just or proper for this court to interfere with the process of selection at this stage, based on a belated prayer made by the petitioner for reporting more vacancies to Commission."

The learned Judge in the other judgment in writ petition No.27174/2006 held as follows:

> "Having considered the rival submissions, I feel that the petitioner

> cannot be granted the reliefs prayed for. It is to be taken note of that the petitioner has not challenged Ext.P3 short list within a reasonable time. None included in that list is a party to this writ petition. No relief can be granted to the petitioner behind the back of those who were included in Ext.P3. On that ground alone this writ petition is liable to be dismissed. I find substance in the contention of the Commission that the minimum mark of 50 was stipulated not as a cut off mark but taking into consideration the lowest mark secured by the candidate who was included in the short list having regard to the number of vacancies reported and the number of persons who can be called for interview. The fact that the petitioner did not challenge the impugned action or the final rank list within a reasonable time is also a significant point in favour of the respondents. In matters of this nature where intervening rights of persons who have applied for the same post are involved, any person who sleeps over his right and thinks that he can challenge the action whenever he wants to do so according to his whims and fancies will not be granted reliefs by this court in the exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. For the above reasons, the writ petition must fail."

The learned Standing Counsel for the Commission also relies upon the principles stated by a Division Bench of this court in Writ Appeal No.1250/2006 concerning the appointment to the post of Sub Inspector of Police (General Executive Branch), a common judgment in Writ petition No.1696/2005 and connected cases and judgment of a Division Bench of this court in Writ Appeal No.327/2006 and connected cases, to contend that the petitioners are not entitled for any relief in these writ petitions.

16. As noticed earlier, in the writ petitions concerning the challenge against the short list, petitioners could not get any interim order allowing

them to participate in the interview. The Public Service Commission thereafter has published a rank list and all the candidates included in the rank list have been appointed. No valid rank list is apparently in force as on today. When the rank list has already been operated and candidates have been appointed based on the ranking after a process of selection containing a written test and interview, no direction can be issued to reopen the entire thing and to publish a revised rank list after interviewing candidates like the petitioners. Further, all the persons included either in the short list or in the main rank list are not parties to these writ petitions. They have acquired rights already and such rights accrued to them cannot be disturbed at this point of time and without them in the array of parties. Nobody has been impleaded in a representative capacity also. The petitioners can succeed only if they are allowed to be interviewed by the Commission in continuation of the selection process. Except in Writ petition No.28298/2006, in all other cases the petitioners do not figure in the short list. Therefore, if a direction is issued to interview those petitioners, it will upset the ranking in the rank list and affect the persons who have already been appointed.

17. In the judgment in Writ Petition No.29829/2005 rendered on 25.10.2005, the learned judge was pleased to hold that once a short list has

been published and further proceedings pursuant to the short list have been set in motion, no purpose will be served by directing the Board to report more vacancies. It has also been held that no direction can be issued to recast the short list based on vacancies reported after finalisation of the short list. Here, the petitioners have approached this court after the short list was published and apparently they failed to get any order in their favour to participate in the interview also. Therefore, I am in full agreement with the findings of the learned single Judge in Writ Petition No.29829/2005. The method adopted by the Public Service Commission in respect of the very same selection process has been upheld in the judgment in Writ Petition No.27174/2006. The Commission has taken a stand therein that the cut off marks is the mark secured by the candidate who was included as the last person in the list and it is not as if Commission fixed a cut off mark and thereafter prepared a short list. In view of the above stand of the Commission, the learned single Judge did not accept the contentions of the petitioners therein. Since the said findings have been rendered in respect of the selection to the very same post, the principles by which relief was refused, will govern these cases also. When the minimum mark of 50 is not a cut off mark but is the lowest mark secured by the candidate who was included in the short list having regard to the number of vacancies reported

and the number of persons who can be called for interview, there are no irregularities in the preparation of the short list. Therefore, the reliance placed by the petitioners in the judgment in Writ Petition No.21840/2005 is not correct. The above judgment also will show that the issue considered therein was different than those raised in these writ petitions.

18. All the petitioners have participated in the selection process and have failed to get their names included either in the short list or in the main rank list. As noticed earlier, the rank list is not even in force now. Therefore, this court cannot put the clock back at this distance of time. Having undergone the process of selection, without challenging the same at the earliest point of time and apparently finding that they were not successful in getting their names included either in the short list or in the main rank list, the petitioners are not entitled to turn round and challenge the process of selection. They cannot also seek for a direction to report fresh vacancies which had arisen apparently at a later point of time.

19. It may also be mentioned herein that when the notification was published, the only available vacancies were 42 N.J.D. vacancies and the Commission was also approached by the Board to withdraw the notification itself, going by the counter affidavit filed by the Board. Therefore, it cannot be contended that the number of persons included in the short list (96) are

too lesser considering the number of vacancies notified at that time.

20. In view of the above circumstances also, I find that the prayer of the petitioners to consider them in the fresh vacancies which arose at a later point of time, cannot be sustained. Therefore, the writ petitions are dismissed without any order as to costs.

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**(T.R. Ramachandran Nair, Judge.)**

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